No. 80-79

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In the

# Supreme Court of the United States

October Term, 1980

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CIRO D'AMBROSIO,

*Petitioner,*

*vs.*

BOARD OF EDUCATION OF THE WARREN HILLS REGIONAL SCHOOL DISTRICT, WARREN COUNTY,

*Respondent.*

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On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

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## BRIEF IN OPPOSITION

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No. 82-79

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

CIRO D'AMBROSIO,

*Petitioner,*

*vs.*

BOARD OF EDUCATION OF THE WARREN HILLS REGIONAL SCHOOL DISTRICT, WARREN COUNTY,

*Respondent.*

**On Petition for a Writ of Certiorari to the Supreme Court of New Jersey**

## BRIEF IN OPPOSITION

### Statement of the Case

Petitioner, Ciro D'Ambrosio, filed a Petition of Appeal with the New Jersey Commissioner of Education challenging the non-renewal of his teaching contract by the respondent, Board of Education of the Warren Hills Regional School District, Warren County, New Jersey.

The thrust of petitioner's claim was that the respondent failed to renew his contract because of his Italian national origin.

The respondent filed a Motion addressed to the legal sufficiency of the petitioner's pleading, arguing that petitioner's Petition of Appeal should be dismissed for failure to state a claim. The respondent relied upon a long line of decisions of the New Jersey Commissioner of Education, the New Jersey State Board of Education, and the New Jersey courts, holding that under New Jersey pleading standards a pleading is legally insufficient if it merely contains a generalized conclusionary allegation. Rather, to be legally sufficient the pleading must contain detailed specific factual allegations which are supportive of the generalized conclusionary allegation.

In response to the respondent's Motion, the petitioner sought leave to file an Amended Petition of Appeal adding allegations of specific overt acts supportive of his general claim of discrimination on account of national origin. The Administrative Law Judge granted the petitioner's request and an Amended Petition of Appeal was filed. The respondent then renewed its Motion to Dismiss, arguing that the additional allegations contained in the Amended Petition of Appeal did not cure the legal insufficiency of the original Petition of Appeal under New Jersey pleading standards. The Administrative Law Judge agreed, and in his Initial Decision determined that the Amended Petition of Appeal failed to comport with well-established New Jersey pleading requirements and thus failed to state a claim. In so holding, the Administrative Law Judge reviewed the pleading standards enunciated in numerous New Jersey cases, analyzed the allegations contained in the Amended

Petition of Appeal, and concluded that the Amended Petition of Appeal was legally deficient since it "contains nothing but bare and generalized allegations unsupported by specific facts."

This ruling of the Administrative Law Judge, based upon well-established New Jersey pleading standards, was ultimately upheld by the New Jersey State Board of Education, the Appellate Division of the New Jersey Superior Court, and at least indirectly by the New Jersey Supreme Court in denying petitioner's Petition for Certification filed with that court.

## *LEGAL ARGUMENT*

### POINT I

**This Court lacks jurisdiction to review the judgment of the New Jersey Supreme Court on Writ of Certiorari because the Federal question raised in this petition (due process of law under the Fourteenth Amendment) was not timely and properly rasied below.**

Petitioner attempts to invoke this Court's jurisdiction under 28 U.S.C.A. §1257(3), pursuant to which this Court may review final judgments rendered by the highest court of a state by Writ of Certiorari where any right, privilege or immunity is claimed under the Constitution of the United States. Petitioner ostensibly bases his Petition jurisdictionally upon his claim of denial of his right to due process of law under the Fourteenth Amendment of the United States Constitution. It is jurisdictionally axiomatic, however, that petitioner must also have properly and timely raised his due process contentions below in order to properly bring this matter to this Court. In this regard the instant Petition is utterly deficient.

In furtherance of the foregoing principles, the Rules of the Supreme Court of the United States specifically require in Rule 21.1(h) as follows:

> If review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings, both in the court of first instance and in the appellate court, at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by the court; such pertinent quotation of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e.g., ruling on exception, portion of court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on writ of certiorari.

The instant Petition makes no effort whatsoever to comply with the foregoing requirement. The reason is obvious. The record clearly reveals that the only issue raised below and passed upon below related to the sufficiency of petitioner's pleading under New Jersey pleading standards, having absolutely nothing to do with due process of law under the Fourteenth Amendment. At no point did petitioner claim that the due process clause of the Fourteenth Amendment entitled him to a hearing. Rather, petitioner constantly argued that he was entitled to a hearing by virtue of his understanding of the pleading requirements applicable to New Jersey proceedings. He additionally argued that the pleading standards utilized in comparable Federal cases should serve as persuasive references in determining his plead-

ing contentions under New Jersey law. It must be reiterated, however, that at no point did petitioner previously contend that his claimed entitlement to a hearing on his pleadings would, if denied, implicate the due process clause of the Fourteenth Amendment. The petitioner not having raised his alleged due process rights below, naturally the administrative agency and courts below did not pass upon any such contention.

For the foregoing reasons the instant Petition is jurisdictionally unsound and must be denied for that reason alone.

## POINT II

**Even if the instant petition is jurisdictionally proper, it nevertheless fails to raise questions warranting this Court's review.**

Petitioner's due process contentions totally misconstrue the constitutional due process guarantee. Petitioner appears to argue that the mere dismissal of his pleading for failure to meet New Jersey's established pleading requirements, in and of itself, deprived petitioner of the type of hearing required by the due process clause. This contention is utterly without merit.

The very cases cited by petitioner graphically display the distinction between valid pleading requirements and due process requirements, which distinction has apparently been ignored by petitioner.

The case upon which petitioner places greatest reliance is *Logan* v. *Zimmerman Brush Co.*, 102 S. Ct. 1148 (1982). The petitioner in *Logan* was denied any kind of hearing at

all and was ultimately vindicated by this Court under the due process clause. Petitioner herein claims that he should be treated likewise since he was also deprived of any form of a hearing due to the dismissal of his pleading for failure to conform to New Jersey pleading requirements. Petitioner's attempted analogy is absolutely incorrect. This is clearly shown in *Logan* itself, where this Court states:

> Obviously, nothing we have said entitles every civil litigant to a hearing on the merits in every case. The State may erect reasonable procedural requirements for triggering the right to an adjudication, • • •. And the State certainly accords *due* process when it terminates a claim for failure to comply with a reasonable procedural or evidentiary rule. • • • (102 S.Ct. at 1158) (Emphasis in original; citations omitted).

Indeed, the only possible due process issue in this case is whether the New Jersey pleading requirements, which petitioner failed to meet according to the New Jersey courts, are reasonble. Petitioner never raised this issue below and certainly has made no effort whatsoever in the instant Petition to show unreasonableness, and instead has chosen merely to cite Federal cases ruling upon Federal pleading requirements as though that is relevant to the due process issue. Petitioner has cited: *Conley* v. *Gibson*, 355 U.S. 45 (1957); *Scheur* v. *Rhodes*, 416 U.S. 232 (1974); *McClain* v. *The Real Estate Board of New Orleans, Inc.*, 100 S.Ct. 502, 511 (1980); and *Lucido* v. *Cravath, Swain & Moore*, 425 F. Supp. 123 (S.D.N.Y. 1977). All of the foregoing cases are cited for their rulings upon Federal pleading sufficiency, and have absolutely nothing whatsoever to do with New Jersey's pleading procedures or the constitutionality of New Jersey's pleading procedures. Whether or not petitioner's pleadings might have survived a motion to dismiss under the Federal Rules of Civil Procedure is ab-

solutely irrelevant to this case, unless petitioner is somehow arguing that the Federal pleading rules are the only pleading rules which are constitutional under the due process clause. If petitioner is indeed so arguing, he is absolutely wrong.

This Court has long held that due process does not require following the Federal process of law as prescribed for the Federal courts in equivalent Federal litigation. The due process clause does not use the words "due process" as an equivalent for the process of any particular court, state or Federal. Rather, it refers to a standard of process that may cover many varieties of processes that are expressive of different combinations of historical or modern, local or other, juridical standards, provided only that they do not conflict with the fundamental principles of liberty and justice which lie at the base of our civil and political institutions. *Bute* v. *Illinois,* 333 U.S. 640.

There is no question but that the instant pleading was found by the New Jersey administrative and judicial systems to have failed to conform to a long line of educational and judicial decisions concerning pleading requirements in a petition of appeal before the New Jersey Commissioner of Education. Nowhere does (or did) the petitioner argue that these requirements conflict with our fundamental principles of liberty and justice, or that he was unaware of, or surprised by, these standards. Instead he bases his entire argument upon the alleged failure to conform to the pleading standards by which the Federal courts are governed. The Federal pleading standards are totally irrelevant to the constitutional issue raised herein, for it is clear that no particular procedure violates the Fourteenth Amendment simply because another procedure is contended to be fairer or wiser. *Stein* v. *New York,* 346 U.S. 156, rehearing denied 346 U.S. 842.

It is similarly well-established that administrative agencies, such as the New Jersey Commissioner of Education and New Jersey State Board of Education, are not held to strict conformity with judicial procedures required in a court of law. 2 Am Jur 2d, Administrative Law, §414. Thus, even if it is assumed *arguendo* that the New Jersey Department of Education has established pleading requirements that differ from those applicable to similar proceedings in the New Jersey or Federal courts, there is no violation of due process simply because the standards are different. Rather, as stated previously, the standards must be shown to violate fundamental principles of liberty and justice. As previously noted, no such contention, much less showing, has been made by petitioner herein. Certainly the record shows no such infirmity. To the contrary, it is undisputed that the respondent invoked pleading standards set forth in a long line of cases decided by the agency and the state courts, cited those very cases, and the Administrative Law Judge even gave petitioner, at petitioner's request, a second opportunity at meeting those pleading requirements in an amended pleading.

Petitioner also appears to argue that the judgment below is erroneous because it misapplies New Jersey law with regard to appropriate pleading. Respondent is at a loss to comprehend how any such alleged misapplication of state law, in and of itself, would present a Federal question warranting review by this Court. Respondent totally disagrees with petitioner with regard to the alleged misapplication of New Jersey case law. However, since respondent does not believe that such a contention is properly before this Court, respondent will not belabor the point. Suffice it to say that the New Jersey Supreme Court was not inclined to review

this case based upon such contentions of misapplication of New Jersey law, and respondent does not believe that this Court should or could properly attempt to substitute its judgment for that of the highest court of New Jersey with regard to the proper application of New Jersey pleading requirements.

Finally, if this Court harbors the slightest doubt that petitioner's pleading was properly disposed of below, the following matters are presented in support of the propriety of the dismissal of petitioner's claim on respondent's motion.

Petitioner's original Petition of Appeal alleged that Petitioner, a non-tenured teacher employed by respondent, was informed by Respondent in April, 1978 that he would not be re-employed for the 1978-79 school year. The gravamen of the reasons given Petitioner for his non-renewal were his deficiencies in verbal presentation and English enunciation. In May 1978, Respondent changed its mind and did offer Petitioner re-employment for 1978-79.

The original Petition of Appeal went on to allege that during the 1978-79 school year Respondent remained dissatisfied with Petitioner's verbal performance, in that "almost from the outset of school Petitioner's evaluations contained criticism of his speaking". In the spring of 1979, Respondent determined not to re-employ Petitioner for the 1979-80 school year, informing Petitioner that the reasons for his non-renewal were his continued unsatisfactory verbal performance (described as his "lack of contemporary communication"), as well as his inability to establish himself as an authority figure in class, his unsatisfactory student control, and his creation of confusion among the students concerning his expectations in academic and behavior matters.

Finally, the original Petition of Appeal alleged that "the reasons proffered by Respondent are knowingly and intentionally false, discriminatory and violating Petitioner's constitutional rights" and that Respondent's action was in retaliation of his successfully peititioning in 1978 (apparently referring to Respondent's change of heart in the Spring of 1978 as to Petitioner's non-renewal for the 1978-79 school year). Although the original Petition of Appeal contained no further allegations, it is assumed that an additional allegation was intended to be expressed in Petitioner's request for an Order that Respondent "cease and desist from its illegally discriminating against Petitioner because of his national origin."

Petitioner did not need a hearing to establish the facts underlying this dispute. This is clear from a reading of Respondent's Answer and the Pre-Hearing Order, revealing no dispute as to the accuracy of original Petition paragraphs 1 through 6, as amended by the Pre-Hearing Order. It was therefore conceded that Petitioner was a non-tenured teacher, was initially informed of his non-renewal for 1978-79 for the reasons cited in original paragraph 3, was nevertheless re-employed for the 1978-79 school year due to a change of heart by Respondent, was negatively evaluated during 1978-79 due to his speaking deficiencies, and was informed that he would not be re-employed for 1978-80 for the reasons cited in original Petition paragraph 6.

The crux of this case, therefore, was Petitioner's general allegations that his non-renewal was brought about for "knowingly and intentionally false" reasons, that Respondent's actions were "discriminatory and violating Petitioner's constitutional rights" (presumably due to Petitioner's national origin), and that Respondent retaliated against Petitioner for reasons relating to Respondent's change of heart in 1978 concerning his non-renewal for

1978-79. Respondent denied these general allegations. However, Petitioner was not entitled to a hearing on these disputed general allegations, since a long and unbroken line of New Jersey Commissioner of Education and judicial precedents clearly reveals the legal insufficiency of such general allegations, mandating the dismissal of the Petition of Appeal in its entirety as a matter of New Jersey law.

The fatal deficiency of Petitioner's pleading lies in its total reliance on generalized allegations in the nature of conclusions, without detailed supportive factual allegations. The necessity for detailed specific allegations in support of conclusions flows essentially from the fundamental New Jersey legal principle that in determining not to re-employ a non-tenured teacher, a local board of education is exercising a discretionary statutory function. For this reason the actions of a local board in this area are entitled to a presumption of correctness, thereby placing a burden on the petitioner to plead and prove affirmatively that the board's action was for proscribed reasons or was otherwise arbitrary, capricous or unreasonable. This presumption of board correctness, coupled with an affirmative obligation on a petitioner with respect to pleading and proof, is based upon a long line of judicial and administrative decisions: *Boult and Harris* v. *Board of Education of Passaic,* 135 N.J.L. 329 (Supreme Court 1947), aff'd 136 N.J.L. 521 (E. & A. 1948); *Schinck* v. *Board of Education of Westwood Consolidated School District,* 60 N.J. Super. 448, 476 (App. Div. 1960); *Quinlin* v. *Board of Education of North Bergen Township,* 73 N.J. Super. 40 (App. Div. 1962); *Thomas* v. *Morris Township Board of Education,* 89 N.J. Super. 327, 332 (App. Div. 1965), aff'd. 46 N.J. 581 (1966); *Porcelli* v. *Titus,* 108 N.J. Super. 301 (App. Div. 1969), certif. den. 55 N.J. 310 (1970); *Joseph J. Dignan* v. *Board of Eduction of the Rumson-Fairhaven Regional High*

*School District*, App. Div. Docket No. A-444-74 (decided Oct. 10, 1975); *Inez Nettles* v. *Board of Education of the City of Bridgeton, Cumberland County*, 1976 *S.L.D.* 555, 560; *Patricia Peters* v. *Board of Education of the Township of North Brunswick, Middlesex County*, 1977 *S.L.D.* 72, 84 aff'd State Board of Ed. 1977 *S.L.D.* 85; *John C. Saccenti* v. *Board of Education of the Township of North Brunswick, Middlesex County*, 1977 *S.L.D.* 265, 280; *Michael R. Gearing* v. *Board of Education of the Borough of Manasquan, Monmouth County*, 1977 *S.L.D.* 751, 759; *Susan Zink* v. *Board of Education of the City of Salem, Salem County*, 1977 *S.L.D.* 1102, 1106; *Kathryn R. Fox* v. *Board of Education of the Watchung Hills Regional High School District, Somerset County*, 1977 *S.L.D.* 1107, 1112-13; *Nancy Sherwood* v. *Board of Education of the Township of Piscataway, Middlesex County*, 1977 *S.L.D.* 1226, 1234; *Margaret Perrault* v. *Board of Education of the Hopewell Valley Regional School District, Mercer County*, 1978 *S.L.D.*— (February 28, 1978), Slip Opinion at pages 2-3.

The instant Petition of Appeal simply failed to make the type of affirmative allegation necessary to overcome Respondent's presumption of correctness. Generalized allegations have never been accepted by the New Jersey Commissioner of Education, the New Jersey State Board of Education, or the New Jersey Courts. This is so, whether the generalized allegations pertain to allegedly false reasons, alleged discrimination, alleged violation of constitutional rights, or alleged arbitrary or capricious action. A petition of appeal must be dismissed for insufficient pleading in the absence of detailed and specific allegations of instances which support the generalized conclusion that has been alleged. The New Jersey case most frequently cited for this proposition is *Winston* v. *Board of Ed. South Plainfield*, 125 N.J. Super. 131 (App. Div. 1973), aff'd 64 N.J. 582

(1974). In *Winston*, the Appellate Division of the New Jersey Superior Court clearly stated that "the bare assertion or generalized allegations of infringement of a constitutional right does not create a claim of constitutional dimensions." 125 N.J. Super. at 144.

The New Jersey Commissioner of Education has consistently followed the reasoning of the Court in *Winston* in dismissing petitions for insufficiently specific pleadings supportive of general allegations. The first such case was *Barbara Hicks* v. *Board of Education of the Township of Pemberton, Burlington County*, 1975 *S.L.D.* 332, where the Commissioner stated (at 336):

> "When a teaching staff member alleges that a local board of education has refused re-employment for proscribed reasons (i.e. race, color, religion, etc.) or in violation of constitutional rights such as free speech, or that the Board was arbitrary and capricious or abused its discretion, *and is able to provide adequately detailed specific instances of such allegations*, then the teaching staff member may file a Petition of Appeal before the Commissioner which will result in a full adversary proceeding." (Emphasis Added).

The underlined portion of the above quotation has been consistently relied upon by the Commissioner to dismiss petitions lacking the required supportive detailed allegations. *Mary C. Donaldson* v. *Board of Education of the City of North Wildwood, Cape May County*, 1976 *S.L.D.* 60, 64, aff'd State Board of Ed. 1976 *S.L.D.* 65; *Iris Sachs* v. *Board of Education of the East Windsor Regional School District, Mercer County, et al.*, 1976 *S.L.D.* 170, 172-3, aff'd State Board of Ed. 1976 *S.L.D.* 175; *John C. Roy, II* v. *Board of Education of the Township of Middle, Cape May County*, 1976 *S.L.D.* 569, 572, aff'd State Board of Ed. 1976

*S.L.D.* 574; *Dee Foster, et al.* v. *Board of Eduaction of the Township of Neptune, Monmouth County,* 1976 *S.L.D.* 693, 697; *Carol Sulovsky* v. *Board of Education of the Town of West Orange, Essex County,* 1976 *S.L.D.* 1075, 1081-82; *Jacqueline Nasuti et al.* v. *Board of Education of West Amwell, Hunterdon County,* 1979 *S.L.D.*—(January 9, 1979), Slip Opinion at p. 11.

The distinction between a bald conclusion that has been alleged, as against a detailed specific factual allegation, was highlighted by the Commissioner when he stated "in the absence of specific allegations with respect to petitioner's conclusion that the Board's action of not re-employing her was based on constitutionally proscribed reasons, an adversary hearing is not warranted." *Alice W. Cardman, et al.* v. *Board of Education of the Township of Millburn, Essex County,* 1977 *S.L.D.* 746, 749-50.

For additional cases where the Commissioner dismissed a petition for failure to provide affirmative offers of proof containing sufficiently detailed allegations, see: *Claire Haberman* v. *Board of Education of the Borough of Morris Plains, Morris County,* 1975, S.L.D. 848, 855, citing *Joan Sherman* v. *Malcolm Connor, et al.,* App. Div. Docket No. A-2122-73 (decided Janu. 28, 1975); *Mary Ann McCormack, et al.* v. *Board of Education of the Northern Highlands Regional High School District, Bergen County, et al.,* 1976 S.L.D. 754, 759, aff'd. State Board of Ed. 1977 S.L.D. 1299; *Michael R. Gearing* v. *Board of Education of the Borough of Manasquan, Monmouth County, supra,* 1977 S.L.D. 751, 758; *Kathryn R. Fox* v. *Board of Eduction of the Watchung Hills Regional High School District, Somerset County, supra,* 1977 S.L.D. 1107, 1110-11.

The foregoing legal principles, applied to the instant original Petition of Appeal, mandated dismissal. The

original Petition of Appeal, even when read most favorably to Petitioner, contained nothing more or less than bare unsupported generalized allegations of conduct by Respondent characterized as knowingly and intentionally false, discriminatory, in violation of Petitioner's constitutional rights, on account of Petitioner's national origin, or in retaliation for unnamed events which occurred in 1978. Clearly, each and every one of these allegations is simply a generalized unsupported conclusion. The following statement by the New Jersey Commissioner in *Kathryn R. Fox, supra,* 1977 S.L.D. at pages 1110-11, is equally applicable herein:

> "Petitioner contends that her constitutional rights were violated but fails to detail • • • a single instance supportive of a conclusion that such violation may have occurred. • • • In the instant matter petitioner has failed to offer detailed instances which would lend credence to her generalized allegation that her constitutional rights were violated. Nor is there a showing either that her due process rights were violated or that the statutes were violated. The Commissioner determines that such bare assertion provides no basis for cause of action • • •."

Petitioner's Amended Petition of Appeal was filed for the ostensible purpose of adding allegations of specific overt acts supportive of his national origin and discrimination claim. However, the new allegations set forth in the Amended Petition of Appeal also failed to meet the requisite standards of pleadings.

Paragraphs 5 and 6 of the Amended Petition alleged that in May, 1978 Petitioner was reassigned to the Junior High School and informed that he would teach General

Science in the 1978-79 school year, and that Petitioner's Department Chairperson informed Petitioner that the transfer was the first step toward his non-renewal for school year 1979-80 and warned him to be on guard. In response to these paragraphs, Respondent admitted that Petitioner was transferred from High School Physics teacher to Junior High School Physical Science teacher commencing in September 1978, but denied that the transfer was the first step toward his non-renewal for 1979-80, and stated that it lacked knowledge concerning the statements attributed to Petitioner's Department Chairperson. However, even if all the allegations set forth above were true, Respondent is at a loss to perceive any logical or legal nexus between these allegations and Petitioner's claim of discrimination on account of his national origin. Respondent asks rhetorically: How does a transfer from High School physics to Junior High School physical science constitute a specific overt act supportive of Petitioner's national origin discrimination claim? Likewise, even if the transfer was *arguendo* the "first step" towards Petitioner's eventual non-renewal, how can that have any different bearing on the legal sufficiency of the pleadings than Petitioner's actual non-renewal itself, which had already been pleaded in the original Petition?

Paragraph 5 of the original Petition alleged that during the 1978-79 school year Petitioner's evaluation contained criticism of his speaking. The Amended Petition adds to this allegation by merely setting forth in paragraphs 7 through 9 some of the specific comments contained in the evaluations concerning Petitioner's language difficulties, and also alleges that Petitioner's new Department Chairperson "had not been privy to the incidents of the previous spring." The meaning and relevance of the latter allegation has frankly elluded Respondent throughout these pro-

ceedings. As to the remaining allegations, however, how can the specific comments concerning Petitioner's language difficulties have any different bearing on the legal sufficiency of the pleadings than the general allegation previously set forth in his original Petition? A teacher's ability or inability to adequately communicate in the English language is indisputably an appropriate criterion upon which to evaluate the quality of his teaching performance. A negative evaluation based upon this concededly proper criterion, standing alone, thus simply does not constitute a specific overt act of national origin discrimination. The legal insufficiency of such an allegation is certainly not altered—and *a fortiori* not cured—by simply particularizing the pertinent comments contained in the evaluation.

At p. 24 of the instant Petition it is argued that the Administrative Law Judge erred in failing to deal with Petitioner's "allegation that his speaking and usage of the English language is not at all deficient". Petitioner argues that in passing upon Respondent's Motion to Dismiss, the Administrative Law Judge "should have accepted the allegations of the Petition as true". The difficulty with this approach is that Petitioner nowhere in his original Petition of Appeal or his Amended Petition of Appeal made any such allegation. Rather, all that was alleged, and therefore all that the Administrative Law Judge accepted as true, was that Respondent gave as the reasons for Petitioner's non-renewal his deficiencies in verbal presentation and English enunciation (among other things). The Administrative Law Judge did not assume that Petitioner was deficient in language, but rather assumed that that was the reason advanced by Respondent in failing to renew his employment. In actuality, the only conclusion drawn by the Administrative Law Judge with respect to language proficiency, and which conclusion is clearly correct, is that in the absence of additional facts not present herein, the

non-renewal of a teacher based upon a perceived deficiency in speaking and using the English language is a perfectly proper reason for such personnel action on the part of a local board of education.

## CONCLUSION

**For the reasons hereinabove set forth, the petition for a Writ of Certiorari should be denied in its entirety.**

Respectfully submitted,

DAVID A. WALLACE,
*Attorney for Respondent.*